

Final

**Rhode Island Supreme Court  
Ethics Advisory Panel Op. 2019-04  
Issued October 10, 2019**

FACTS

The inquiring attorney has a private law practice and concentrates in real estate matters, including real estate purchases and refinance transactions. A mortgage broker has solicited the inquiring attorney's participation in the following arrangement that involves the inquiring attorney, the mortgage broker, and a digital marketing agency. Under the proposal, the digital marketing agency agrees to advertise the mortgage broker's business at no cost; the mortgage broker agrees to forward title orders to the inquiring attorney for borrowers' applications; and the inquiring attorney agrees to forward approximately two hundred dollars to the digital marketing agency for each title order he/she receives from the mortgage broker. The inquiring attorney states that the amount he/she pays to the agency for each title order "is built" into his/her settlement agent fee at the borrower's closing. He/she further states that the relationship between the digital marketing agency and the inquiring attorney would be on a 1099 basis, the agency being an independent contractor.

ISSUE PRESENTED

The inquiring attorney asks whether the proposed arrangement is permissible under the Rules of Professional Conduct.

OPINION

The arrangement violates Rule 7.2(c) and is therefore impermissible.

REASONING

Rule 7.2(c) states

- (c) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may
- (1) pay the reasonable costs of advertisements or communications permitted by this Rule;
  - (2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service;
  - (3) pay for a law practice in accordance with Rule 1.17; and
  - (4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if
    - (i) the reciprocal referral agreement is not exclusive, and
    - (ii) the client is informed of the existence and nature of the agreement.

With four exceptions, none of which apply to this inquiry, Rule 7.2(c) prohibits a lawyer from paying others to recommend his or her legal services. In the proposed arrangement in this inquiry, the mortgage broker forwards a title order to the inquiring attorney. In return, the inquiring attorney pays two hundred dollars to a third party, the digital marketing company. Although the two hundred dollar payment is not made directly to the mortgage broker, the payment is for the broker's benefit. The inquiring attorney effectively pays the mortgage broker's costs of advertising in exchange for title orders. The proposed arrangement presents a clear violation of Rule 7.2(c).

The Panel further believes that "building" the two hundred dollar payment into the inquiring attorney's settlement fee may violate the obligation of reasonableness of fees under Rule 1.5(a). Finally, the Panel is without jurisdiction to respond to the inquiring attorney's inquiry about whether the proposed arrangement violates the Real Estate Settlement Procedures Act (RESPA).